

**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

IN THE MATTER OF:)	Docket HWCA: P2-02/03-005
)	
E.I. du Pont de Nemours)	
and Company)	CORRECTIVE ACTION
Oakley Facility)	CONSENT AGREEMENT
6000 Bridgehead Road)	
Oakley, California 94561)	
)	
EPA ID No. CAD00915671)	Health and Safety Code
CAD009151671)	Section 25187
Respondent.)	

1.0 INTRODUCTION

1.1 The Department of Toxic Substances Control (DTSC) and E.I. du Pont de Nemours and Company (Respondent or DuPont) enter into this Corrective Action Consent Agreement (Consent Agreement) and agree as follows:

1.2. Jurisdiction exists pursuant to Health and Safety Code section 25187, which authorizes DTSC to issue an order to require corrective action when DTSC determines that there is or may be a release of hazardous waste or hazardous waste constituents into the environment from a hazardous waste facility. Health and Safety Code section 25264, subdivision (a), authorizes DTSC, as the administering agency at a "hazardous materials release site" to supervise all aspects of site investigation and remedial action conducted by the responsible party and, for that purpose, DTSC shall have sole jurisdiction over all activities that may be required to carry out a site investigation and remedial action necessary to respond to the hazardous materials release at the site.

1.3. The parties enter into this Consent Agreement to avoid the expense of litigation and to carry out promptly the corrective action described below.

1.4. Respondent is the owner and operator of a former manufacturing facility located at 6000 Bridgehead Road, Oakley, Contra Costa County, California (the Facility).

1.5. Respondent engaged in the management of hazardous waste at the Facility pursuant to an interim status document (ISD) issued by the Department of Health Services (DHS), DTSC's predecessor, on September 18, 1981. Under the terms and conditions of its ISD, Respondent was authorized to operate six hazardous waste surface impoundments (ponds) and various hazardous waste treatment and storage units. Respondent has since closed all regulated units at the Facility. DTSC approved Respondent's certification of closure of the ponds on November 7, 1985. DTSC approved Respondent's certification of closure for all remaining regulated units at

the Facility on January 20, 2000. In a letter dated June 21, 2000, DTSC determined that a post-closure permit would be required. The Facility is a "hazardous material release site" as defined in Health and Safety Code section 25260, subdivision (e).

1.6. The terms used in this Consent Agreement are as defined in California Code of Regulations, title 22, section 66260.10 and Health and Safety Code section 25260, except as otherwise provided.

1.7. For purposes of this Consent Agreement, the term "hazardous materials" means the term defined in Health and Safety Code section 25260, subdivision (d) and shall include "hazardous waste and hazardous waste constituents".

1.8. Respondent agrees to implement all DTSC-approved workplans and to undertake all actions required by the terms and conditions of this Consent Agreement, including any portions of this Consent Agreement incorporated by reference.

1.9. Respondent waives any right to request a hearing on this Consent Agreement pursuant to Health and Safety Code section 25187.

1.10. On March 28, 2002, pursuant to California Environmental Protection Agency Site Designation Committee Resolution No. 02-03, DTSC was designated as the appropriate agency to act as the Adminstrating Agency for the Facility. Pursuant to Resolution No. 02-03 and Health and Safety Code section 25260 and 25264, subdivision (a), among other requirements, DTSC must consult, on an ongoing basis, with appropriate agencies.

1.11. A Consultative Work Group (CWG) has been established for the Facility and it meets on a regular basis. It is composed of entities who have expressed an interest in the Facility. The purpose of the CWG is to foster a coordinated effort to investigate and remediate the Facility. Current members of the CWG include DTSC (the Adminstrating Agency), the Regional Water Quality Control Board, Central Valley Region (Support Agency), City of Oakley (Support Agency) and DuPont (Respondent).

2.0 FINDINGS OF FACT

2.1. On September 18, 1987, the United States Environmental Protection Agency (U.S. EPA) completed a RCRA Facility Assessment (RFA) for the Facility. In April 1993, DTSC completed a RFA supplement. Both RFAs identified 43 solid waste management units (SWMUs) and 17 areas of concern (AOCs) that either have released or may have released hazardous waste or hazardous waste constituents into the environment. DTSC will review the current conditions report, previous RFAs and any additional information and determine which previously identified or additional SWMUs and AOCs require further investigation.

2.2. Based on the RFAs, DTSC concludes that further investigation may be needed to determine the nature and extent of any release of hazardous waste, hazardous waste constituents or hazardous materials from the SWMUs and the AOCs.

2.3. The hazardous waste, hazardous waste constituents and hazardous materials of concern at the Facility include, but are not limited to, volatile organic compounds, semi-volatile organic compounds, polychlorinated biphenyls, dioxins, dibenzofurans and inorganic elements.

2.4. Hazardous wastes, hazardous waste constituents or hazardous

materials have migrated or may migrate from the Facility into the environment through the following pathways: soil, groundwater, surface water, sediment, and air.

2.5. The Facility is bounded by Highway 4 to the south, Bridgehead Road to the west, the San Joaquin River to the north, and Big Break Road to the east. The Facility, identified on Figure 1, includes the area identified as "2003 DuPont Property Boundary" and the "Cline Property sold by DuPont in 2000". Land use within one mile of the site is comprised of agricultural, commercial, and residential properties. The groundwater beneath the Facility is designated pursuant to the Regional Water Quality Control Plan, Central Valley Region, Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Regional Board Basin Plan) to have the beneficial uses of municipal and domestic water supply (drinking water source), agricultural supply, and industrial process and service supply. Wetlands are located immediately adjacent to the northeast and east of the Facility.

2.6. Releases from the Facility have or may have migrated into the San Joaquin River and the adjacent wetlands, Lauritzen Yacht Harbor, Big Break Marina, Little Break Area and subsurface groundwater. The San Joaquin River, adjacent to the Facility, is part of the Sacramento-San Joaquin Delta. The Basin Plan designates the beneficial uses of the Sacramento-San Joaquin Delta as municipal and domestic supply, agricultural supply, stock watering, industrial process and service supply, contact and non contact recreation, warm and cold water freshwater habitat, wildlife habitat, and navigation. On November 5, 2002 Respondent submitted a Draft Current Conditions Report to DTSC for review. Based on findings in and DTSC's review and approval of the Final Current Conditions Report, RFAs and any additional information, DTSC may determine and notify Respondent which previously identified or additional SWMUs and AOCs require further investigation. DTSC may revise the list of SWMUs and AOCs that require further investigation and/or remediation.

2.7 Pursuant to SB 1082 (Health and Safety Code section 25204.6), the California Regional Water Quality Control Board, Central Valley Region (Regional Board) was previously designated as lead agency for overseeing groundwater monitoring and corrective action at the Facility. At the time of the designation pursuant to section 25204.6, DTSC had already determined that DuPont is required to obtain a post-closure permit for the former surface impoundments at the Facility. Respondent has conducted closure, site investigation and interim remediation activities at the Facility under the oversight of the Regional Board, as documented in reports submitted to the Regional Board and summarized in the draft Current Conditions Report submitted to DTSC on November 5, 2002. The Regional Board issued Monitoring and Reporting Program No. 97-826 on November 18, 1997 (MRP) and Cleanup and Abatement Order No. R5-2002-0710 on March 21, 2002 (CAO). The Facility does not currently have any Waste Discharge Requirements (WDRs) from the Regional Board. The Facility is enrolled in the State Water Resources Control Board's General Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities, Order No. 97-03-DWQ.

The goals of the Facility's corrective action program are to protect human health and the environment and to ensure compliance with all applicable statutes and regulations. Remedy selection will take into account evaluation of reasonably anticipated future land uses, which affect exposure pathways that are evaluated in the risk assessment(s).

3.0 PROJECT COORDINATOR

3.1 Within ten (10) days of the effective date of this Consent Agreement, DTSC and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a person to act in his/her absence. All communications between Respondent and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Consent Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven days prior written notice.

4.0 WORK TO BE PERFORMED

4.1 Respondent agrees to perform the work required by this Consent Agreement in accordance with the applicable state and federal laws, their implementing regulations, and the applicable DTSC and the U.S. EPA documents. Table 1 provides a summary of the work required under this Consent Agreement. Specific work details and additional required work activities follow Table 1. Timelines for the submission of additional documents, revisions of draft reports, workplans, response to comments and final reports will be specified in correspondence from DTSC.

4.2 No later than the due date specified as AN-11 in Table 1, or within 90 days of receipt of notification from DTSC, Respondent shall prepare and submit a Post Closure Permit Application, as required by the California Code of Regulations, title 22, chapter 20, section 66270.1, subdivision (c). The Post Closure Permit Application shall meet the requirements of the California Code of Regulations, title 22, chapter 14, sections 66265.110, 66265.117 and 66265.197.

4.3 No later than the due date specified as AN- 2 in Table 1, Respondent shall prepare and submit to DTSC a Revised Public Participation Plan. If necessary, DTSC may require Respondent to prepare and provide supplements or updates to the Public Participation Plan.

4.4 No later than the due date specified as AN-3 in Table 1, Respondent shall submit a Groundwater Monitoring Plan. This Groundwater Monitoring Plan shall also meet the requirements of the California Code of Regulations, title 22, article 6, sections 66265.90 through 66265.99 and Section 66270.14 with respect to all "regulated units" as defined in section 66265.90. The Groundwater Monitoring Plan shall describe the rationale for well selection, sampling protocols, field procedures and laboratory quality assurance and quality control procedures that will be followed in implementing the Groundwater Monitoring Program contained in Attachment 7.

4.5 No later than the due date specified as AN-4 in Table 1, Respondent shall prepare a Surface Water Monitoring Plan. The Surface Water Monitoring Plan shall also meet the requirements of the California Code of Regulations, title 22, article 6, sections 66265.90 through 66265.99 and section 66270.14 related to releases and/or contributing releases from the regulated units.

4.6 For all "regulated units" as defined in section 66265.90, Respondent shall monitor all monitoring points in the affected medium (groundwater, surface water

or the unsaturated zone) for all constituents contained in the California Code of Regulations, title 22, chapter 14, appendix IX at least annually to determine whether additional hazardous constituents are present and, if so at what concentration(s) as specified in the California Code of Regulations, title 22, section 66265.99, subdivision (e)(6). The wells currently subject to this requirement are identified in Attachment 7.

4.7 Upon the effective date of this Consent Agreement, Respondent shall conduct groundwater sampling activities in accordance with the Groundwater Monitoring Program (GMP) contained in Attachment No.7. The parties may modify Attachment No. 7 upon written mutual agreement without having to modify the text of the Consent Agreement. Any modification to Attachment No. 7 shall be attached to the Consent Agreement, shall state the date upon which it is intended to become effective, and shall supersede all prior versions of the Attachment.

4.8 Respondent shall notify the DTSC Project Coordinator of any new release(s) of hazardous waste and/or hazardous waste constituents or hazardous materials discovered during the course of groundwater monitoring, field investigation or other activities, orally within 48 hours of discovery. Such newly-discovered releases may be from newly-discovered units, SWMUs, AOCs or from units, which, based on the findings of the RFA, DTSC has previously determined that no further investigation was necessary, or releases to the soil from units, SWMUs or AOCs investigated as part of the RFI. Respondent shall notify the DTSC Project Coordinator in writing within 10 days of discovery, including the immediacy and magnitude of the potential threat to human health and/or the environment. Discovery of a new hazardous constituent at a known SWMU or AOC shall not be considered a "new release" for purposes of this section.

4.9 DTSC may require further investigation of the newly-identified release(s). Upon request from DTSC, Respondent shall prepare an RFI Workplan for approval by DTSC, that is consistent with Section 6 of this Consent Agreement.

Table 1 - Summary of Work Activities

Activity Number (AN)	Work Activity	Due Date from effective date of this Consent Agreement or Other Specified Date
1	Submit Final Current Conditions Report	60 days
2	Submit Revised Public Participation Plan	30 days
Activity Number (AN)	Work Activity	Due Date from effective date of this Consent Agreement or Other Specified Date
3	Submit Groundwater Monitoring Plan	30 days

4	Submit Surface Water Monitoring Plan	30 days
5	Submit Central Slough Surface Water and Sediment Workplan and Schedule	30 days
6	Submit Groundwater Monitoring Well Decommissioning and Replacement Workplan and Schedule	90 days
7	Submit Groundwater Interim Measures Workplan and Schedule	180 days
8	Submit RFI Soil Workplan and Schedule	150 days
9	Submit RFI Groundwater Workplan and Schedule	180 days
10	Submit RFI Surface Water and Sediment Workplan and Schedule	120 days
11	Submit Post Closure Permit Application	No later than June 1, 2004 or within 90 days of receipt of written notification from DTSC
12	Submit RFI Groundwater Report	Schedule as approved in the RFI Groundwater Workplan (AN 9)
13	Submit RFI Surface Water and Sediment Report	Schedule as approved in the Surface Water and Sediment Workplan (AN 10)
14	Submit RFI Soil Report	Schedule as approved in the RFI Soil Workplan (AN 8)
15	Submit Human Health Risk Assessment/Conceptual Site Model Workplan and Schedule	150 Days

Activity Number (AN)	Work Activity	Due Date from effective date of this Consent Agreement or Other Specified Date
16	Submit Ecological Risk Assessment/Conceptual Site Model Workplan and Schedule	90 Days
17	Submit Soils Corrective Measures Study Workplan	Schedule as approved in the Human Health Risk Assessment Report
18	Submit Sediment Corrective Measures Study Workplan	Schedule as approved in the Ecological Risk Assessment Report
19	Submit Groundwater Corrective Measures Study Workplan	Schedule as approved in the Human Health Risk Assessment Report
20	Submit Corrective Measures Implementation Workplan	Within 60 days of receipt of notification of DTSC's selection of the corrective measures

5.0 INTERIM MEASURES (IM)

5.1. Respondent shall evaluate available data and assess the need for interim measures. Interim measures shall be used whenever possible to control or abate immediate threats to human health and/or the environment, and to prevent and/or minimize the spread of hazardous materials while long-term corrective action alternatives are being evaluated.

5.2. Respondent submitted a Draft Current Conditions Report to DTSC on November 5, 2002. The Draft Current Conditions Report, which is subject to approval by DTSC, contains an assessment of interim measures previously implemented at the Facility and identifies additional data needed for evaluating future potential interim measures. This new data or information shall be collected during the early stages of the RCRA Facility Investigation. DTSC will review the Respondent's assessment and determine which interim measures, if any, Respondent will implement at the Facility. If deemed appropriate by DTSC, such determination may be deferred until additional data are collected. No later than the due date specified as AN-1 in Table 1, Respondent shall submit to DTSC a Final Current Conditions Report for DTSC review and approval.

5.3 No later than the due date specified as AN-7 in Table 1, Respondent shall submit to DTSC a workplan and schedule for the implementation of Groundwater Interim Measures ("IM Workplan"). The IM Workplan and schedule is subject to approval by DTSC and shall provide for the evaluation of all Interim Measures necessary to achieve groundwater stabilization and protect human health and the environment. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be developed that is consistent with the Scope of Work for Interim Measures Implementation contained in Attachment Number 1.

5.4. Within (30) days of receiving DTSC's written request, Respondent shall submit to DTSC an IM Workplan for approval. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be developed that is consistent with the Scope of Work for Interim Measures Implementation contained in Attachment Number 1. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize the Respondent to act prior to DTSC's receipt of the IM Workplan.

5.5. If DTSC identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or hazardous materials, or discovers new solid waste management units and/or areas of concern not previously identified, DTSC will notify Respondent in writing. Within 30 days of receiving DTSC's written notification, Respondent shall submit to DTSC for approval an IM Workplan that identifies Interim Measures that will mitigate the threat. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be developed that is consistent with the Scope of Work for Interim Measures Implementation contained in Attachment Number 1. If DTSC determines that immediate action is required, the DTSC Project Coordinator may orally authorize Respondent to act prior to receipt of the IM Workplan.

5.6. All IM Workplans shall ensure that the Interim Measures are designed to mitigate current or potential threats to human health and/or the environment, and should, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy that may be required at the Facility.

5.7. Concurrent with the submission of an IM Workplan, Respondent shall submit to DTSC a Health and Safety Plan that is consistent with the Scope of Work for a Health and Safety Plan contained in Attachment Number 2.

6.0 RCRA FACILITY INVESTIGATION (RFI)

6.1. No later than the due date specified as AN-8 in Table 1, Respondent shall submit to DTSC a RFI Soil Workplan and Schedule for a RCRA Facility Investigation (RFI Soil Workplan). The RFI Soil Workplan shall incorporate findings from previous investigations, identify data gaps identified in the Current Conditions Report, identify an investigation strategy that defines the lateral and vertical extent of hazardous materials in soil, determine the potential to impact water quality and determine the naturally occurring and anthropogenic levels of chemicals in soil.

6.2 No later than the due date specified as AN-9 in Table 1, Respondent shall submit to DTSC a RFI Groundwater Workplan and Schedule (RFI Groundwater Workplan). The RFI Groundwater Workplan shall address data gaps identified in the Current Conditions Report, define the lateral and vertical extent of hazardous materials in groundwater and determine the naturally occurring and anthropogenic levels of chemicals in groundwater.

6.3 No later than the due date specified as AN-5 in Table 1, Respondent shall submit to DTSC a Central Slough Surface Water and Sediment Workplan and Schedule ("RFI Central Slough Surface Water and Sediment Workplan").

6.4 No later than the due date specified as AN-10 in Table 1, Respondent shall submit to DTSC a RFI Surface Water and Sediment Workplan and Schedule (RFI Surface Water and Sediment Workplan). The RFI Surface Water and Sediment Workplan shall address data gaps and shall incorporate findings from previous investigations and will identify an investigation strategy that defines the lateral and vertical extent of hazardous materials in surface water and sediment and determine the naturally occurring and anthropogenic levels of chemicals in surface water and sediment.

6.5 No later than the due date specified as AN-6 in Table 1, Respondent shall submit to DTSC a Groundwater Monitoring Well Decommissioning and Replacement Workplan and Schedule that identifies all monitoring wells that do not comply with the construction and monitoring standards and will propose methods for replacement, abandonment or upgrades.

6.6 Each RFI Workplan and Schedule is subject to approval by DTSC and shall be developed that is consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment Number 3. DTSC will review each RFI Workplan and Schedule and notify Respondent in writing of DTSC's approval or disapproval.

6.7. Each RFI Workplan shall detail the methodology to: (1) gather data needed to make decisions on interim measures/ stabilization during the early phases of the RCRA Facility Investigation; (2) identify and characterize all sources of hazardous materials; (3) define the nature, degree and extent of hazardous materials; (4) define the rate of movement and direction of hazardous materials flow; (5) characterize the potential pathways of hazardous materials migration; (6) identify actual or potential human and/or ecological receptors; (7) evaluate the potential to impact waters of the state for their current and likely future beneficial use and (8) support development of alternatives from which a corrective measure will be selected by DTSC. A specific schedule for implementation of all activities shall be included in the RFI Workplan.

6.8. Respondent shall submit RFI Reports to DTSC for approval in accordance with each DTSC-approved RFI Workplan schedule. Each RFI Report shall be developed consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment Number 3. If there is a phased investigation, separate RFI Reports and a report that summarizes the findings from all phases of the RFI must be submitted to DTSC. DTSC will review the RFI Report(s) and notify Respondent in writing of DTSC's approval or disapproval.

6.9. Concurrent with the submission of a RFI Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment Number 2. If Workplans for both an IM and RFI are required by this Consent Agreement, Respondent may submit a single Health and Safety Plan that addresses the combined IM and RFI activities.

6.10. Respondent shall prepare and submit a RFI Summary Fact Sheet to DTSC that summarizes the findings from recent phases of the RFI. The RFI Summary Fact Sheet shall be submitted to DTSC in accordance with the schedule contained in the approved RFI Workplan. DTSC will review the RFI Summary Fact Sheet and notify Respondent in writing of DTSC's approval or disapproval, including any comments and/or modifications. When DTSC approves the RFI Summary Fact Sheet, Respondent shall mail the approved RFI Summary Fact Sheet to all individuals on the Facility mailing list established pursuant to California Code Regulations, title 22, section

66271.9(c)(1)(D), within thirty (30) calendar days of receipt of written approval.

7.0 RISK ASSESSMENT

7.1 Based on the information available to DTSC, Respondent is required to conduct a Risk Assessment to evaluate potential human health risk and ecological risk and to establish site-specific action levels and cleanup standards.

7.2 No later than the due date specified as AN-15 in Table 1, Respondent shall prepare and submit a written Human Health Risk Assessment/Conceptual Model Workplan and Schedule.

7.3 No later than the due date specified as AN-16 in Table 1, Respondent shall prepare and submit a written Ecological Risk Assessment/Conceptual Site Model Workplan and Schedule.

8.0 CORRECTIVE MEASURES STUDY (CMS)

8.1 Respondent shall prepare a Corrective Measures Study (CMS), if hazardous materials concentrations exceed human health-based or ecologically-based action levels established by the DTSC-approved Risk Assessment Report, if one is required under this Consent Agreement. The CMS and any CMS Workplan shall be consistent with all applicable local, state and federal requirements, regulations and statutes.

8.2 No later than the due date specified as AN-17 in Table 1, Respondent shall submit a Soils CMS Workplan to DTSC. The Soils CMS Workplan is subject to approval by DTSC and shall be developed that is consistent with the Scope of Work for a Corrective Measures Study contained in Attachment Number 4.

8.3 No later than the due date specified as AN-18 in Table 1, Respondent shall submit a Sediment CMS Workplan to DTSC. The Sediment CMS Workplan is subject to approval by DTSC and shall be developed consistent with the Scope of Work for a Corrective Measures Study contained in Attachment Number 4.

8.4 No later than the due date specified as AN-19 in Table 1, Respondent shall submit a Groundwater CMS Workplan to DTSC. The Groundwater CMS Workplan is subject to approval by DTSC and shall be developed that is consistent with the Scope of Work for a Corrective Measures Study contained in Attachment Number 4.

8.5 Each CMS Workplan shall detail the methodology for developing and evaluating potential corrective measures to remedy any releases that exceed DTSC-approved site specific action levels as established in the DTSC approved Risk Assessment Report for the Facility. The CMS Workplan shall identify the potential corrective measures, including any innovative technologies that may be used for the containment, treatment, remediation, and/or disposal of contamination.

8.6 Respondent shall prepare treatability studies for all potential corrective measures that involve treatment except where Respondent can demonstrate to DTSC's satisfaction that they are not needed. The CMS Workplan shall include, at a minimum, a summary of the proposed treatability study including a conceptual design, a schedule for submitting a treatability study workplan, or Respondent's justification for not proposing a treatability study.

8.7 Respondent shall submit a CMS Report to DTSC for approval in accordance with DTSC-approved CMS Workplan schedule. The CMS Report shall be developed that is consistent with the Scope of Work for a Corrective Measures Study contained in Attachment Number 4. DTSC will review the CMS Report and notify Respondent in writing of DTSC's approval or disapproval.

9.0 REMEDY SELECTION

9.1. DTSC will provide the public with an opportunity to review and comment on the final draft of the CMS Report, DTSC's proposed corrective measures for the Facility, and DTSC's justification for selection of such corrective measures. Depending on the level of community concern, DTSC may conduct a public hearing to obtain comments.

9.2. Following the public comment period, DTSC may select final corrective measures or require Respondent to revise the CMS Report and/or perform additional corrective measures studies.

9.3. DTSC will notify Respondent of the final corrective measures selected by DTSC in the Final Decision and Response to Comments. The notification will include DTSC's reasons for selecting the corrective measures.

10.0 CORRECTIVE MEASURES IMPLEMENTATION (CMI)

10.1. No later than the due date specified as AN-20 in Table 1, Respondent shall submit to DTSC a Corrective Measures Implementation (CMI) Workplan. The CMI Workplan is subject to approval by DTSC and shall be developed that is consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment Number 5.

10.2. Concurrent with the submission of a CMI Workplan, Respondent shall submit to DTSC a Health and Safety Plan developed that is consistent with the Scope of Work contained in Attachment Number 2.

10.3. The CMI program shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of corrective measures at the Facility. In accordance with the schedule contained in the approved CMI Workplan, Respondent shall submit to DTSC the documents listed below, to the extent applicable. These documents shall be developed that is consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment Number 5.

- Operation and Maintenance Plan
- Draft Plans and Specifications
- Final Plans and Specifications
- Construction Workplan
- Construction Completion Report
- Corrective Measures Completion Report
- Monitoring and Reporting

10.4. DTSC will review all required CMI documents and notify Respondent

in writing of DTSC's approval or disapproval.

10.5. As directed by DTSC, within 90 days of DTSC's approval of all required CMI documents, Respondent shall establish a financial assurance mechanism for Corrective Measures Implementation in compliance with California Code of Regulations, title 22, sections 66264.143 or 66265.143 as applicable. The financial assurance mechanisms may include any mechanism described in California Code of Regulations, title 22, sections 66254.143 or 66265.143 as applicable, or any other mechanism acceptable to DTSC.

11.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT

11.1 DTSC must comply with the California Environmental Quality Act (CEQA) insofar as activities required by this Consent Agreement are projects subject to CEQA. Respondent shall provide all information necessary to facilitate any CEQA analysis. DTSC will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC will conduct an Initial Study. Based on the results of the Initial Study, DTSC will determine if a Negative Declaration or an Environmental Impact Report (EIR) should be prepared. DTSC will prepare and process any such Negative Declaration. However, should DTSC determine that an EIR is necessary, such an EIR would be prepared under a separate agreement between DTSC and Respondent.

12.0 DTSC APPROVAL

12.1. Respondent shall revise any workplan, report, specification, or schedule in accordance with DTSC's written comments. Respondent shall submit to DTSC any revised documents by the due date specified by DTSC. Revised submittals are subject to DTSC's approval or disapproval.

12.2. Upon receipt of DTSC's written approval, Respondent shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.

12.3. Any DTSC-approved workplan, report, specification, or schedule required under this Consent Agreement shall be deemed incorporated into this Consent Agreement.

12.4. Verbal advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

13.0 SUBMITTALS

13.1. Beginning with the first full month following the effective date of this Consent Agreement, Respondent shall provide DTSC with quarterly progress reports of corrective action activities conducted pursuant to this Consent Agreement. Progress reports are due on the 15th day of the first month following the close of each reporting period. The progress reports shall conform to the Scope of Work for Progress Reports contained in Attachment 6. DTSC may adjust the frequency of progress reporting to be consistent with site-specific activities.

13.2. Any report or other document submitted by Respondent pursuant to this Consent Agreement shall be signed and certified by the Project Coordinator, a responsible corporate officer, or a duly authorized representative.

13.3. The certification required by paragraph 13.2 above, shall be in the following form:

I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Signature: _____

Name: _____

Title: _____

Date: _____

13.4. Respondent shall provide copies of all documents, including but not limited to, workplans, reports, and correspondence. The number of copies Respondent must provide shall be determined by DTSC, but shall not exceed seven (7). Respondent shall deliver copies to entities identified by DTSC. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which 2 copies are required. Copies shall also be provided on Compact Disk in Adobe Acrobat format and/or additional electronic formats as may be specified by DTSC. DTSC may provide a document distribution list to the Respondent for direct mailing of copies. Respondent shall provide documents to other entities that request them concurrently with submission of those documents to DTSC.

13.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Consent Agreement shall be in writing and shall be sent to the current Project Coordinators.

14.0 PROPOSED CONTRACTOR/CONSULTANT

14.1 All work performed pursuant to this Consent Agreement shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Consent Agreement, Respondent shall notify DTSC Project Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Consent Agreement.

15.0 ADDITIONAL WORK

15.1 DTSC may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of DTSC-approved workplans. DTSC shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within 14 days after the receipt of such determination, Respondent may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, Respondent shall submit to DTSC a workplan for the additional work. Such workplan shall be submitted to DTSC within 30 days of receipt of DTSC's determination or according to an alternate schedule established by DTSC. Upon approval of a workplan, Respondent shall implement it in accordance with the provisions and schedule contained therein. The need for, and disputes concerning, additional work are subject to the dispute resolution procedures specified in this Consent Agreement.

16.0 QUALITY ASSURANCE

16.1. All sampling and analyses performed by Respondent under this Consent Agreement shall follow applicable DTSC and U.S. EPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report.

16.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories Respondent proposes to use must be specified in the applicable workplans.

17.0 SAMPLING AND DATA/DOCUMENT AVAILABILITY

17.1. Respondent shall submit to DTSC upon request the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Consent Agreement.

17.2. Respondent shall notify DTSC in writing at least seven days prior to beginning each separate phase of field work approved under any workplan required by this Consent Agreement. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

17.3. At the request of DTSC, Respondent shall provide or allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Agreement. Similarly, at the request of Respondent, DTSC shall allow Respondent or its authorized representative to take split or duplicate samples of all samples collected by DTSC under this Consent Agreement.

18.0 ACCESS

18.1 Except as provided in Section 18.2, Subject to the Facility's security and safety procedures, Respondent agrees to provide DTSC and its representatives access at all reasonable times to the Facility and any other property to which access is required for implementation of this Consent Agreement and shall permit such persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Agreement and that are within the possession or under the control of Respondent or its contractors or consultants.

18.2 To the extent that work being performed pursuant to this Consent Agreement must be done beyond the Facility boundary, Respondent shall use its best efforts to obtain access agreements necessary to complete work required by this Consent Agreement from the present owners of such property within 30 days of approval of any workplan for which access is required. Best efforts as used in this paragraph shall include, at a minimum, a letter by certified mail from the Respondent to the present owners of such property requesting an agreement to permit Respondent and DTSC and its authorized representatives access to such property. Best efforts shall also include, on a case by case basis, offering the payment by Respondent of reasonable sums of money in consideration of granting access. Any such access agreement shall provide for access to DTSC and its representatives. Respondent shall provide DTSC's Project Coordinator with a copy of access agreements. In the event that an agreement for access is not obtained within 30 days of approval of any workplan for which access is required, or of the date that the need for access becomes known to Respondent, Respondent shall notify DTSC in writing within 14 days thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such agreements. DTSC may, at its discretion, assist Respondent in obtaining access.

18.3 Nothing in this section limits or otherwise affects DTSC's right of access and entry pursuant to any applicable State or federal law or regulation.

18.4 Nothing in this Consent Agreement shall be construed to limit or otherwise affect Respondent's liability and obligation to perform corrective action including corrective action beyond the Facility boundary.

19.0 RECORD PRESERVATION

19.1. Unless otherwise authorized by DTSC, Respondent shall retain, during the pendency of this Consent Agreement and for a minimum of six years after its termination, all data, records, and documents that relate in any way to the performance of this Consent Agreement or to hazardous waste management and/or disposal at the Facility. Respondent shall notify DTSC in writing 90 days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Consent Agreement and shall be addressed to:

Mohinder S. Sandhu, Chief
Standardized Permits and Corrective Action Branch
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

19.2. If Respondent retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Agreement, Respondent will require any such agents, consultants, or contractors to provide Respondent a copy of all documents produced pursuant to this Consent Agreement.

19.3. All documents pertaining to this Consent Agreement shall be stored in a central location at the Facility, or at a location otherwise agreed to by the parties, to afford easy access by DTSC and its representatives.

20.0 DISPUTE RESOLUTION

20.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Agreement. If Respondent fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

20.2. If Respondent disagrees with any written decision by DTSC pursuant to this Consent Agreement, Respondent's Project Coordinator shall orally notify DTSC's Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

20.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objection in writing. Respondent's written objection must be forwarded to Chief, Standardized Permits and

Corrective Action Branch, Department of Toxic Substances Control, with a copy to DTSC's Project Coordinator. The written objection must be mailed to the Branch Chief within 14 days of Respondent's receipt of DTSC's written decision. Respondent's written objection must set forth the specific points of the dispute and the basis for Respondent's position.

20.4. DTSC and Respondent shall have 14 days from DTSC's receipt of Respondent's written objection to resolve the dispute through formal discussions. This period may be extended by DTSC for good cause. During such period, Respondent may meet or confer with DTSC to discuss the dispute.

20.5. After the formal discussion period, DTSC will provide Respondent with its written decision on the dispute. DTSC's written decision will reflect any agreements reached during the formal discussion period and be signed by the Branch Chief or his/her designee.

20.6. During the pendency of all dispute resolution procedures set forth above, the time periods for completion of work required under this Consent Agreement that are affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Consent Agreement.

21.0 RESERVATION OF RIGHTS

21.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Agreement. Respondent reserves all of its statutory and regulatory rights, defenses and remedies, as they may arise under this Consent Agreement. This Consent Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any powers, authorities, rights, or remedies, civil or criminal, that DTSC or Respondent may have under any laws, regulations or common law.

21.2. DTSC reserves the right to disapprove of work performed by Respondent pursuant to this Consent Agreement and to request that Respondent perform additional tasks.

21.3. DTSC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. DTSC reserves its right to seek reimbursement from Respondent for costs incurred by the State of California with respect to such actions. DTSC will notify Respondent in writing as soon as practicable regarding the decision to perform any work described in this section.

21.4. If DTSC determines that activities in compliance or noncompliance with this Consent Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work required, DTSC may order Respondent to stop further implementation of this Consent

Agreement for such period of time as DTSC determines may be needed to abate any such release or threat and/or to undertake any action which DTSC determines is necessary to abate such release or threat. The deadlines for any actions required of Respondent under this Consent Agreement affected by the order to stop work shall be extended to take into account DTSC's actions.

21.5. This Consent Agreement is not intended to be nor shall it be construed to be a permit. This Consent Agreement is not a substitute for, and does not preclude DTSC from requiring, any hazardous waste facility permit, post closure permit, closure plan or post closure plan. The parties acknowledge and agree that DTSC's approval of any workplan, plan, and/or specification does not constitute a warranty or representation that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent Agreement shall not relieve Respondent of its obligations to comply with the Health and Safety Code or any other applicable local, state, or federal law or regulation.

22.0 OTHER CLAIMS

22.1 Except as provided in this Consent Agreement, nothing in this Consent Agreement shall constitute or be construed as a release by DTSC or Respondent from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility.

23.0 OTHER APPLICABLE LAWS

23.1 All actions required by this Consent Agreement shall be conducted in accordance with the requirements of all local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

24.0 REIMBURSEMENT OF DTSC'S COSTS

24.1. Respondent shall pay DTSC's costs incurred in the implementation of this Consent Agreement. Such costs include DTSC's costs incurred in the preparation and implementation of this Consent Agreement prior to the effective date of this Consent Agreement.

24.2. An estimate of DTSC's costs is attached as Attachment 8 showing the amount of \$194,766.92. It is understood by the parties that this amount is only a cost estimate for the activities shown on Attachment 8 and it may differ from the actual costs incurred by DTSC in overseeing these activities or in implementing this Consent Agreement. DTSC will provide additional cost estimates to Respondent as the work progresses under the Consent Agreement.

24.3. DTSC will provide Respondent with a billing statement at least quarterly, which will include the name(s) of the employee(s), identification of the

activities, the amount of time spent on each activity, and the hourly rate charged. If Respondent does not pay an invoice within 60 days of the date of the billing statement, the amount is subject to interest as provided by Health and Safety Code section 25360.1.

24.4. DTSC will retain all costs records associated with the work performed under this Consent Agreement as required by state law. DTSC will make all documents that support the DTSC's cost determination available for inspection upon request, as provided by the Public Records Act.

24.5. Any dispute concerning DTSC's costs incurred pursuant to this Consent Agreement is subject to the Dispute Resolution provision of this Consent Agreement and the dispute resolution procedures as established pursuant to Health and Safety Code section 25269.2. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

24.6. All payments shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the Respondent's name and address, and the docket number of this Consent Agreement, PCA Code (22120), Site Code (200165) and Work Phase (00). Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

25.0 MODIFICATION

25.1. This Consent Agreement may be modified by mutual agreement of the parties. Any agreed modification shall be in writing, shall be signed by both parties, shall have as its effective date the date on which it is signed by all the parties, and shall be deemed incorporated into this Consent Agreement.

25.2. Any requests for revision of an approved workplan requirement must be in writing. Such requests must be timely and provide justification for any proposed workplan revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the Chief, Standardized Permits and Corrective Action Branch, Department of Toxic Substances Control, or his or her designee. Any approved workplan revision shall be incorporated by reference into this Consent Agreement.

26.0 TERMINATION AND SATISFACTION

26.1 The provisions of this Consent Agreement shall be deemed satisfied upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). DTSC will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the

satisfaction of DTSC that the terms of this Consent Agreement including payment of DTSC's costs have been satisfactorily completed. The Acknowledgment will affirm Respondent's continuing obligation to preserve all records after the rest of the Consent Agreement is satisfactorily completed.

27.0 EFFECTIVE DATE

27.1 The effective date of this Consent Agreement shall be the date on which this Consent Agreement is signed by all the parties. Except as otherwise specified, "days" means calendar days.

28.0 SIGNATORIES

28.1 Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Agreement.

DATE: 6/12/03

BY: Michael J. Lukas
Representing Respondent

MICHAEL J. LUKAS, BUSINESS TEAM MANAGER
Name and title of Respondent's
Representative DuPont Corporate Remediation Group.

DATE: 6-17-2003

BY: Mohinder S. Sandhu

Mohinder S. Sandhu, P.E. Chief
Standardized Permits and Corrective Action Branch
Department of Toxic Substances Control

